

Tuesday, June 10, 2003

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 10:00 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARING

Eisenhower Health Services, 100770

7-1-96 to 6-30-99, \$97,344.65 Tax

For Claimant:

Suzanne Beaudelaire, Representative

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution to Ms. Migden was disclosed. No other disqualifying contributions were disclosed.

Issues: Whether overhead expenses incurred by EMC for claimant, and recorded in the books of EMC but not in the books of claimant, represent additional gross receipts to claimant for the sale of tangible personal property from claimant to EMC.

Whether the audited taxable ratio of 72.31 percent that was used to establish taxable overhead is excessive.

Whether a timely claim for refund was filed for alleged overpayments of tax on overhead expenses for the period July 1, 1996, through June 30, 1999.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden not participating pursuant to Government Code section 15626, the Board ordered that the petition be granted as to Issue 1.

Mr. Leonard moved that the petition be granted as to Issue 2. The motion was seconded by Mr. Parrish but no vote was taken.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel abstaining, Ms. Migden not participating pursuant to Government Code section 15626, the Board ordered that the petition be granted as to Issue 3.

Mr. Chiang made a substitute motion as to Issue 2 that the audited taxable ratio be reduced to 45 percent. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden not participating pursuant to Government Code section 15626.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

VFGA, Inc., 154384

7-1-97 to 6-30-00, \$86,393.96 Tax, \$23,102.76 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Tuesday, June 10, 2003

Claudio C. Moyeda, 127838

4-1-98 to 12-31-00, \$92,065.54 Tax, \$9,252.29 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Tha Chan Yin, 56284

7-1-96 to 12-31-98, \$20,118.41 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Cowboy Boogie Company, 153922

7-1-98 to 6-30-01, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Sayed Nasim, 214045

January 30, 2003 Notice of Seizure and Forfeiture

Action: Determined the staff properly seized the cigarettes.

Sayed Nasim, 214046

January 29, 2003 Notice of Seizure and Forfeiture

Action: Determined the staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Sonia Gregerson, 115484.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Sonia Gregerson, 115484

1997, \$116.00 Assessment

Action: The Board took no action.

Donald L. Nichols, 191764

1998, \$205.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tuesday, June 10, 2003

Horatio MacMillan, 197754

1989, \$598.00 Claim for Refund

1991, \$317.00 Claim for Refund

1992, \$452.77 Claim for Refund

1993, \$538.31 Claim for Refund

1994, \$586.36 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ann Togia, 185511

1980, \$1,082.05 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ronald and Bobbie Williams, 192054

1999, \$179.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jerry Lee Rohrer, 149978

1996, \$3,255.00 Assessment

1997, \$8,215.00 Assessment

Action: Deny the petition for rehearing.

Stretto Enterprises, 76184

1992, \$545,680.73 Tax

Action: Deny the petition for rehearing.

Venture Communications, Inc., 141641

9-30-93, \$475,256.55 Tax

Roberto Brutocao, 140415

12-31-93, \$82,891.00 Tax, \$39,066.75 Late Filing Penalty

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matters: *Rick Jenkins, 193298; Michael Joseph, 173490; Khana Khanis, 187689 and Carolyn R. Sawin, 172395.*

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Raffoul Asmar, 204845

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tuesday, June 10, 2003

David L. Edwards, 196172

2002, \$312.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Rick Jenkins, 193298

2000, \$600.00 Claim for Credit

Action: The Board took no action.

Michael Joseph, 173490

2000, \$1.00 or more Claim for Credit

Action: The Board took no action.

Khana Khanis, 187789

2002, \$347.50 Claim for Credit

Action: The Board took no action.

Jerred J. Lewis, 194830

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Zena Joy Lewis, 182330

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lina E. Luna, 194292

2002, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Julio M. Molina, 192853

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Carolyn R. Sawin, 172395

2001, \$1.00 or more Claim for Credit

Action: The Board took no action.

Esther M. Turner, 191281

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Alfredo Velarde, 192824

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tuesday, June 10, 2003

Berniece A. Venaas, 194168

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Thai Van Vu, 194247

2002, \$347.50 Claim for Credit

Action: Modify the action of the Franchise Tax Board.

Robert J. Wilcox, 194800

2002, \$40.60 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Audrey J. Williams, 196716

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

The Board deferred consideration of the following matters: *KMC Funding Corporation, 218204 and KMC Millennium LLC, 218182.*

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Dinnerware Plus Holdings, Inc., 192143

1-1-97 to 6-30-00, \$55,849.79

Action: Approve the redetermination as recommended by staff.

Omnitrition International, Inc., 157316

1-1-98 to 12-31-00, \$141,388.80

Action: Approve the redetermination as recommended by staff.

Braun Trust U/A/D 7/30/97, 207005

4-27-00, \$72,600.00

Action: Approve the redetermination as recommended by staff.

Fly By Night LLC, 167197

10-27-00, \$155,875.00

Action: Approve the redetermination as recommended by staff.

Tuesday, June 10, 2003

Oregon Sealark LLC, 169313

9-11-00, \$198,745.93

Action: Approve the redetermination as recommended by staff.

Cascade Engineering, Inc., 195300

10-1-98 to 9-30-01, \$463,522.67

Action: Approve the redetermination as recommended by staff.

Sofamor Danek LP, 193240

10-1-97 to 3-31-00, \$72,233.02

Action: Approve the redetermination as recommended by staff.

Edmund Scientific Company, Inc., 161328

1-22-96 to 3-31-00, \$496,080.31

Action: Approve the redetermination as recommended by staff.

Pacific Gas & Electric Company, 158226

10-1-98 to 4-5-01, \$1,645,111.78

Action: Approve the redetermination as recommended by staff.

Creative Design Consultants, Inc., 181644

1-1-98 to 3-31-01, \$77,438.98

Action: Approve the redetermination as recommended by staff.

KMC Funding Corporation, 218204

2-1-02 to 3-31-02, \$446,913.45

Action: The Board took no action.

KMC Millennium LLC, 218182

10-1-01 to 12-31-01, \$179,705.10

Action: The Board took no action.

Allcity Paging, Inc., 129069

7-1-93 to 3-31-95, \$255,976.19

Action: Approve the denial of claim for refund as recommended by staff.

Blake Construction Company, Inc., 142391

7-1-97 to 6-30-00, \$58,536.94

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
CONSENT**

Action: (Motion expunged.)

Tuesday, June 10, 2003

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish not participating on *Abbott Laboratories, Inc., 195239*, and Ms. Mandel not participating on *Nestle USA, Inc., 145346*, both in accordance with Government Code section 87105, the Board made the following orders:

Philip C. Haines, 217158

7-22-98, \$61,522.96

Action: Approve the credit and cancellation as recommended by staff.

Rafael Vazquez Aguila, 217141

10-1-99 to 6-14-02, \$707,133.18

Action: Approve the credit and cancellation as recommended by staff.

S. C. Johnson & Son, Inc., 145378

7-1-98 to 9-30-01, \$92,227.17

Action: Approve the refund as recommended by staff.

P N S Stores, Inc., 216841

3-28-99 to 9-29-01, \$313,871.13

Action: Approve the refund as recommended by staff.

City Lumber & Hardware, Inc., 216070

4-1-99 to 3-31-02, \$90,932.05

Action: Approve the refund as recommended by staff.

Bakersfield Dodge, Inc., 201848

7-1-02 to 9-30-02, \$69,797.40

Action: Approve the refund as recommended by staff.

All American Asphalt, 160293

4-1-99 to 9-30-01, \$54,471.71

Action: Approve the refund as recommended by staff.

Peregrine Systems, Inc., 153296

1-1-00 to 9-21-02, \$1,020,569.25

Action: Approve the refund as recommended by staff.

Abracadabra Presentation Graphics, 167284

1-1-99 to 6-30-02, \$109,021.69

Action: Approve the refund as recommended by staff.

Tuesday, June 10, 2003

Stanford University Hospital, 194163

7-1-00 to 6-30-02, \$164,718.96

Action: Approve the refund as recommended by staff.

Campbell Soup Company, 80558

4-1-97 to 9-30-99, \$380,085.05

Action: Approve the refund as recommended by staff.

Mitel Networks, Inc., 163712

10-1-99 to 9-30-00, \$91,345.94

Action: Approve the refund as recommended by staff.

National Cinema Supply Corporation, 146425

1-1-99 to 12-31-99, \$146,799.37

Action: Approve the refund as recommended by staff.

Libbey Glass, Inc., 158346

7-1-98 to 9-30-01, \$111,746.31

Action: Approve the refund as recommended by staff.

Adtran, Inc., 146428

1-1-99 to 6-30-99, \$259,037.37

Action: Approve the refund as recommended by staff.

Steris Corporation, 155672

10-1-98 to 3-31-99, \$372,932.23

Action: Approve the refund as recommended by staff.

Paper-Pak Products, Inc. of Washington, 206935

1-1-02 to 9-6-02, \$54,505.94

Action: Approve the refund as recommended by staff.

Downey Auto Finance Corporation, 118205

1-1-98 to 3-31-01, \$764,396.13

Action: Approve the refund as recommended by staff.

Bigelo & Partners, Inc., 140430

1-1-99 to 12-31-00, \$86,283.51

Action: Approve the refund as recommended by staff.

Interwoven, Inc., 166771

1-1-00 to 12-31-01, \$90,127.20

Action: Approve the refund as recommended by staff.

Tuesday, June 10, 2003

Ixia Communications, 183724

7-1-99 to 6-30-02, \$264,705.93

Action: Approve the refund as recommended by staff.

Abbott Laboratories, Inc., 195239

10-1-99 to 6-30-01, \$66,642.56

Action: Approve the refund as recommended by staff. Mr. Parrish not participating in accordance with Government Code section 87105.

Platform Computing, Inc., 160667

10-1-99 to 9-30-01, \$57,060.37

Action: Approve the refund as recommended by staff.

Spot Graphics, Inc., 156022

10-1-98 to 12-31-01, \$105,292.67

Action: Approve the refund as recommended by staff.

Morgan Stanley Dean Witter Credit Corporation, 206547

7-1-97 to 3-31-01, \$121,426.59

Action: Approve the refund as recommended by staff.

Nestle USA, Inc., 145346

7-1-98 to 9-30-01, \$230,885.18

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Olympian-Gulf Properties, Inc., 201951

4-1-01 to 6-30-02, \$536,201.62

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 215813

7-1-02 to 9-30-02, \$1,612,945.96

Action: Approve the refund as recommended by staff.

Harmonic, Inc., 195952

4-1-00 to 3-31-01, \$356,735.47

Action: Approve the refund as recommended by staff.

Tuesday, June 10, 2003

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Edward L. Randolph, II, 170084

1996, \$623.78 Claim for Refund

For Appellant:

Edward L. Randolph, II

Robert Burlingham

For Franchise Tax Board:

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent abused its discretion in refusing to refund paid interest.

Action: Upon motion of Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SPECIAL TAXES APPEALS HEARINGS

Employers Depot, 135552, 145459

1-1-97 to 12-31-99, \$20,214.00 Fee

1-1-00 to 12-31-00, \$2,936.00 Fee

For Petitioner:

Peter J. Celeste, Attorney

For Property and Special Taxes Department:

Monica G. Brisbane, Tax Counsel

For Department of Toxic Substances Control:

Dennis Mahoney, Staff Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is subject to the annual environmental fee imposed upon certain employer corporations.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

SALES AND USE TAX APPEALS HEARINGS

United Partition Systems, Inc., 94636

4-1-97 to 9-30-99, \$24,881.68 Tax, \$3,276.78 Negligence Penalty

For Petitioner:

Paul Blason, CPA

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited measure of tax for unreported fixed asset acquisitions is overstated.

Whether the additional taxable sales established on a test basis are excessive.

Whether additional adjustment to the understated measure of tax, established from reconciliation of gross receipts reported for sales and use tax purposes and gross receipts reported on Federal Income Tax Returns for the audit period, is warranted.

Whether the 10-percent penalty for negligence should be abated.

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tuesday, June 10, 2003

Mariano Alvarez, 138584

4-1-98 to 12-31-00, \$4,447.01 Tax, \$00.00 Penalty

For Petitioner: Mario Alvarez, Owner

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence supports a reduction in the audited markup.

Action: Upon motion of Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Jim Miller, 165218

7-1-95 to 3-31-98, \$00.00 Tax, \$00.00 Penalty

For Petitioner: Jim Miller

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether relief from the interest is warranted.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Frank Monteleone Jr., 128391

4-1-92 to 12-31-94, \$14,283.96 Tax, \$1,428.40 Finality Penalty

For Petitioner: Murray Greiff, Representative

For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether taxpayer is subject to corporate officer liability for the period April 1, 1992 through December 31, 1994.

Whether the corporation made unreported taxable sales of \$166,619.00 for which it collected sales tax reimbursement in the third and fourth quarters of 1994.

Whether relief from the 10 percent penalty for failure to timely pay the determination (finality penalty) is warranted.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Urban Pipe and Supply Inc., 170577, 157311

10-1-99 to 11-23-99, \$00.00 Tax

10-1-99 to 11-23-99, \$1,776.02 Claim for Refund

For Petitioner: John Novello, Vice President

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, June 10, 2003

Issue: Whether the interest may be abated because the escrow company erroneously withheld too little from the sale of fixtures and equipment and, thus, the claim for refund should be granted.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision

Ms. Migden requested that her office be involved in all future postponements.

Jewelry Doctor Inc., 89000112920

1-1-93 to 12-31-95, \$83,020.07 Tax, \$8,302.03 Negligence Penalty

For Petitioner: Terry E. Stept, Representative
Gene H. Shioda
Jack Lipelis

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited understatement of reported taxable sales is excessive.

Whether the evidence establishes that any of the sales included in the audit as taxable were in fact exempt sales in interstate commerce or non-taxable labor sales.

Whether the negligence penalty is applicable.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

The Board ordered that the August 5, 2003 Board Meeting be moved to August 6, 2003.

The Board recessed at 12:30 p.m. and reconvened at 1:30 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

Seiniger Advertising Inc., 41251

7-1-98 to 9-30-98, \$671,740.25 Tax, \$00.00 Penalty

For Petitioner: Tony Seiniger, President
Joseph Vinatieri, Representative

For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Sales and Use Tax Department erroneously issued a refund to petitioner, and thus properly issued a notice of deficiency determination for that refund.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision to the August 6, 2003 Board Meeting and granted the taxpayer 30 days to provide additional information.

Tuesday, June 10, 2003

Yousef Issa Badawiya, 93434, 115467, 97860, 115463

7-1-97 to 6-30-99, \$5,091.99 Tax, \$518.50 Negligence Penalty

7-1-97 to 6-30-99, \$13,006.78 Tax, \$1,328.59 Negligence Penalty

7-1-97 to 6-30-99, \$5,525.45 Tax, \$561.85 Negligence Penalty

7-1-97 to 6-30-99, \$13,671.10 Tax, \$1,395.02 Negligence Penalty

Badawiya, Inc., 144655

7-1-99 to 6-30-00, \$9,554.22 Tax, \$931.80 Negligence Penalty

For Petitioner:

Ted Srouji, Accountant

Rima Badawiya, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence establishes that petitioners' netted sales for resale were properly supported by resale certificates

Whether the audited amounts of purchases used to established retail sales are excessive.

Whether the beginning inventories should be used in calculating the costs of goods sold

Whether the negligence penalty should be abated.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Ms. Migden requested the staff to pull all innocent spouse Franchise and Income tax appeal cases from the Board calendar until the non-appealing spouse is provided the opportunity to participate in the appeal.

Francisco E. and Dona L. Recalde, 191608

1992, \$96.00 Claim for Refund

1993, \$168.00 Claim for Refund

1994, \$174.00 Claim for Refund

1995, \$241.18 Claim for Refund

1996, \$244.28 Claim for Refund

For Appellant:

Francisco E. Recalde

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that their refund claims are not barred by the statute of limitations.

Appellant's Exhibit: Newspaper Clippings (Exhibit 6.1)

Action: Upon motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating, the Board sustained the action of the Franchise Tax Board.

Tuesday, June 10, 2003

The Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

Exhibits to these minutes are incorporated by reference.

Glencrest LLC, 187551

1998, \$117,61 Claim for Refund

1999, \$15.80 Claim for Refund

For Appellant:

Linda E. Spiegel, Member, Glencrest LLC

For Franchise Tax Board:

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly assessed late payment penalties and interest.

Appellant's Exhibit: Demand Notices (Exhibit 6.2)

Action: Mr. Leonard moved to grant the claim for refund. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board sustained the action of the Franchise Tax Board.

Victor and Mary Jo Hazard, 130149

1997, \$1.00 or more Claim for Refund

For Appellant:

Victor Hazard

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown they are entitled to the amount they claim as a 1997 casualty loss deduction arising out of storm damage to their residence.

Appellant's Exhibit: Misc. Letters (Exhibit 6.3)

Respondent's Exhibit: IRS IMF Account Transcript for Tax Year 1997 (Exhibit 6.4)

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

Leroy L. Carver, III, 156617

1994, \$444,502.00 Assessment

For Appellant:

Michael P. Mears, Attorney

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant incurred capital gains from cancellation of nonrecourse partnership debt.

Whether appellant's duty of consistency under California law bars him from treating his allocable share of a partnership loan as recourse debt.

Appellant's Exhibit: Declarations (Exhibit 6.5)

Tuesday, June 10, 2003

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Marvin E. Bryer, 134026

1997, \$1,060.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant establishes error in the federal determination relied upon by respondent in assessing additional state tax liability.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.6)

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON PETITIONS HEARD JUNE 10, 2003

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Employers Depot, 135552, 145459*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang abstaining, the Board ordered that the petition of *United Partition Systems, Inc., 94636*, be denied and redetermined as recommended by the Appeals Division.

Mr. Parrish moved that the petition of *Mariano Alvarez, 138584* be redetermined based upon a 44.19 percent, which was the second test markup. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Jim Miller, 165218*, be denied and redetermined as recommended by the Appeals Division.

The Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer, Ms. Mandel not participating.

Tuesday, June 10, 2003

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Frank Monteleone Jr., 128391*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Urban Pipe and Supply Inc., 170577, 157311*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the petition of *Jewelry Doctor Inc., 89000112920*, be denied and redetermined as recommended by the Appeals Division.

Ms. Mandel moved that the petition of *Yousef Issa Badawiya, 93434, 115467, 97860, 115463*, and *Badawiya, Inc., 144655*, be denied and redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the warranty allowance be increased to 2 percent, otherwise the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARING

Kee Hee Enterprises, Inc., 83356

10-1-95 to 12-31-98, \$27,311.15 Tax, \$00.00 Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence supports a further reduction in the amount of bank deposits used to establish audited sales for the 6th Avenue bar.

Whether the evidence supports an increase in the audited pour sizes for the 360° Restaurant.

Whether the evidence supports a further increase in the audited adjustment for ending inventory for the fourth quarter of 1997 for the 360° Restaurant.

Whether a further increase in the pilferage allowance is warranted for the 360° Restaurant.

Whether the evidence supports further increasing the audited cost of self-consumed merchandise from \$828 to \$928 per quarter at the 360° Restaurant.

Whether additional adjustment is warranted for the cost of wine used in cooking at the 360° Restaurant.

Whether relief is warranted from the interest added to the determination.

Tuesday, June 10, 2003

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division

Varga-Schremp, Inc., 169306

1-1-99 to 2-22-01, \$21,013.47 Tax, \$2,120.10 Negligence Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence establishes that the audited amounts of unreported taxable sales are excessive.

Whether the negligence penalty should be abated.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Pablo T. and Lourdes A. Malana, 195921

1993, \$2,902.00 Tax, \$725.50 Late Filing Penalty, \$580.40 Accuracy Related Penalty

For Appellant: No Appearance

For Franchise Tax Board: Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants establish error in the federal determination relied upon by respondent in assessing additional state tax liability and penalties.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON APPEAL HEARD JUNE 10, 2003

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Edward L. Randolph, II, 170084*, the Board sustained the action of the Franchise Tax Board.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Johnny E. Hammond, 183571

1997, \$622.00 Assessment

For Claimant: No Appearance

For Franchise Tax Board: Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that the proposed assessment is erroneous.

Tuesday, June 10, 2003

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON APPEAL HEARD JUNE 10, 2003

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish voting no, in the appeal of *Leroy L. Carver, III, 156617*, the Board sustained the action of the Franchise Tax Board.

Ms. Migden requested the staff to schedule more tax appeal oral hearings on the first day of Culver City Board meetings.

The Board adjourned at 3:20 p.m.

The foregoing minutes are adopted by the Board on August 6, 2003.

Note: The following cases were removed from the calendar prior to the meeting: *Palladium Investors, Inc., et al., 89002254320, and Palladium Investors, LTD., 154916.*